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File No. Local Bds 4/43

Legal Deptt.

BRANCH B

Subject:—

Rules and Notifications under the Bombay Local Board Acts, 1923

P 9/(E)

File No. Local Bds 4/43

Gen. 101 e.

39-B

Office of the R.L.A.

A revised draft notification is sent herewith

2. It appears that it is intended to add the proposed rule as rule (27) to the rules made under section 133(h) of the Bombay Local Boards Act, 1923, and published in Government Notification, General Department No. 5001 dated the 6th May 1925. The preamble to the revised draft provides accordingly.

3. The G.D. draft rule provides that the employee of the Board to whom an advance is to be paid shall give an undertaking that he shall serve the Board for a minimum period of five years after securing the diploma and also execute a bond for repayment of the advance in the prescribed manner. It is presumed that the intention is that the employee should execute a bond providing for two things, namely (1) agreeing to the recovery from his salary of the advance paid to him by monthly instalments and (2) undertaking to serve the Board for a minimum period of five years and in case of edfault to pay the prescribed penalty The revised draft rule makes this clear. G.D. should verify whether it is in accordance with its intention. It may be pointed eyt in this connection that it would be desirable to prescribe the panalty in the rule itself.

4. From the Prospectus (pp. 7-8) of the Institute it appears that the Institute holds two sessions every year, each session lasting fir about five minths at the end of which an examination is held. The first session commences from 1st May and lasts upto September and the second sessions commences from 1st November lasts upto March. The candidate may apply for admission to attend classes during any session The revised draft rule therfore refers to the fee Prescribed by the Institute for the session.

Id/- P.N.M.
dt/- 8/1

Remembrancer of Legal Affairs.

VVK. 18/7/58/ U.R. to G.D. No. 217 , dated the 9th January 1943.
SC.

Office of the R.L.A.

A revised draft notification is sent herewith. It is not ~~is~~ to amend rule 5 of the Local Bords Travelling Allowance Rules as that rule refers not to a " Chairman of the Works Committee " but to a "Chairman of a Works Committee" .Similarly it is not necessary to amend items 2 and 4 of sub-rule (1) of rule 10 as those items have now become obsolete on account of the abolition of the taluka local boards.

Id/- P.N.M.
dt/- 4/2/

Remembrancer of Legal Affairs.

U.R. to H)G.D. No. 876 dated the 4th Feb. 1943.

V.V.K. 16/7/56/

5C.

Office of the R.L.A.

Clause (c) and (d) of amendment No.2 in the draft notification at page 71 ante are sufficiently clear and no alterations as proposed by the Committee of Management D.L.B. , Broach , are necessary therein. As regards clause (b) of the amendment, a district local board is a body corporate (see section 47 of the Bombay Local Boards Act, 1923) and can as such be addressed by its corporate name. No alteration in the clause as suggested by the Committeee of Management in para 2 of its letter (page 77) is necessary.

Id/- P.N.M.
dt/- 3/5/

Remembrancer of Legal Affairs

U.R. to G.D. No. 3263 dated the 4th May 1943.

VVK. 16/7/56/
5C.

Office of the R.L.A.

As the draft regulations have to be made by the local authority they have been revised from the drafting point of view, Subject to the following remarks the draft regulations are legally in order :-

Regulation 1. - It is presumed that the intention is to grant leave on average pay to the permanent employees. If so, this should be made clear in the regulation . The expression "official year " has not been defined in the Local Boards Act, AS presumably reference is meant to the "year" as defined in the Bombay General Clauses Act, 1904 , the words "year"may be substituted for "official year

Regulation 2.- Presumably the intention is to grant casual leave not only to the permanent employees but also to temporary employees. If so, the words "In addition to the leave on average pay " may be omitted, The regulation may be revised so as to read that 20 days casual leave may be granted to the employees in each "year '

Regulation 4 .- Under the draft regulation as it stands it will be open to an employee to prefix casual leave to public holidays. this cannot be the intention the draft regulation will require amendment.

Regulation 2 under clause (f) of section 123.- The draft regulation refers to "average emluments ". But as the expression has not been defined in the Act or in the Bombay Civil Services Rules the expression "average pay" may be substituted for that expression and a clause may be added at the end to the effect that the expression "average pay" has the same meaning as it has in the Bombay Civil ervices Rules (see definition of 'average pay ' in rule 9(6) of the Bombay Civil Services Rules)r

Id/- P.N.M.
dt/- 19/5/43.

Remembrancer of Legal Affairs.

U.R. to G.D. No. 3693 , dated the 20th May 1943.

VVK. 16/7/56/ SC.

Office of the R.L.A.

The question for consideration is whether the Provincial Government having once made an order under section 129 of the Bombay Local Boards Act, 1923, supersending a local board for a specified period, is competent to extend the period of supersession from time to time.

2. It is true that several enactments in pari materia e.g. section 179(4) of the Bombay District Municipal Act, 1923,, and section 179(4) of the Bombay Municipal Boroughs Act, 1925, contains express provision for extending the perior of supersessions , and the circumstances parima facie seem to afford room for the argument that whoever the Legislature intended to invest Government with the power of enlarging the period of supersessions it did so in express terms and that the absence of a corresponding provision in the Local Boards Act implices that the power has therebeen with-held. This argument is however negatived by the terms of section 21 of the Bombay General Clauses Act, 1904 , which provides interalia that where by Bombay Act a power to issue an order is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanctions and conditions (if any), to add to, amend, very or rescind such orders.This section applies in determining the extent of the power conferred by section 129 of the the District Local Boards Act, 1923, and that power must accordingly be construed to include a power to add to, amendm vary or rescind an order of supersession once made. The operation of section 21 cannot be excluded except by express wors or necessary inplication, It certainly cannot

be ercluded by implications derived from the language of he statutes Moreover, the enactments in pari materia must themselves be read with section 21 of the Bombay General Clauses Act in respect of matters not expressly provoded by them . Thus section 219 of the Muncipal Boroughs Act contains no provision enabling Government to curtail the ppriod of supersession: but the power under sub-section (1) , when construed in the light of section 21 of the Bombay General Clauses Act, includes the power to rescind or vary an order of supersession and thus to curtail the period of supersession (see Adv. General's opinion dated 15-3-1923 and R.L.A.'s opinion No. 1474 dated 15-3-31 and No. 1673 dated 14-3-36). The power under sub-section (1) of section 219 of the Municipal Boroughs Act wouldm by virtue of section 21 of the Bombay General Clauses Act, include the power also to extend the period of supersession. But this power could only be exercised after enquiry under sub-section (4) of section 219. The presise object of sun-section (4) of appears therefore to be to prescribe merely the conditions in accordance with which the power to extend supersession is to be exercised, The absence of an analogous provision in the District Local Boards aact would at best imply that the observance of such condition was not mandatory and not that Government had no power to extend the period of supersession prescribing by an order made under section 129.

Sd/-

Remembrancer of Legal Affairs.

A(E)

Secy. G.D. No. 170 L. dated 26th August 1943.

O.Local Boards / 43.

VVK.16/7/56.

5C -

Office of the R.I.A.

A revised draft notification is sent herewith. The Do draft notification at pages 19-21 ante provides that the bond to be executed by the employee shall be accompanied by a surety and that in the case of dismissal of the employee before repayment of the amount due under the nond in full the balance shall be recovered from the surety This provision contemplates liability of the surety independantly of any liability on the part of the employee and would render the surety liable as on an indeminity and not on a guaranttee. But since the intention of having a surety join in the execution of a bond is to make him guarantee due performance of the obligations contained in a bond and not to give an indeminity, the provision that in the event of the dismissal of an employee before repayment in full of the amount advanced the balance due shall be recovered from the surety has been omitted.

2. similarly the provise in the G?D? draft notification has been omitted, The provise says that when the employee is compelled to leave the Board's service before the expiry of the period of 5 years for reasons of helath or under circusms ances beyond his cntrol the Board may waive or feduce the amount of penalty. In this case personal consideration is the faundation of the contract and the con - tract will be discharged when the employee leaves service iether for reasons of healthe of under circumstances beyond his cantroal, because in both those cases the performanece will become an impossibility. The employee having been discharged from the contract the Board will have no right to recover the amount of penalty either from him for from his surety or legal representative and therefore no question of waiving the penalty would arise.

3. It is presumed that the intention is that if the employee makes wilful default in serving he should be required to pay the balance of the advance together with the penalty but that ~~but that~~ if ~~he~~ he is dismissed form service he should pay only the balance of the advance due and not the penalty. The draft has been revised to bring out this intention.

Sd/- P.N.M.
dt/- 22/9/

Remembrancer of Legal Affairs

Ut R. to G?D? No. 6434, dated 24th September 1943

VVK. 16/7/56/

Office of the R.L.A.

A revised draft order is sent herewith.

3. The reasons which it was necessary to state in the original order of supersession of a district local board, namely , incompetence default or abuse of powers are no longer available after the local board is superseded and therefore the condition contained in section 129 of the Bombay Local Boards Act, that the order is not possible of fulfilment when the period of the supersession of the board is extended by an amendming order. It is not therefore necessary to state in the amending order any reasons which lead Government to extend the perdod of supersession of the local board, not does the Bombay Local Boards Act contemplate any such statement. On the contrary if any reasons are stated for extending the period of supersession of a local board there is the risk of the order being challenged on the ground that the reasons stated in the order for extending the period are not valid in law. It would therefore be desirable to omit the reasons stated in the preamble to the proposed G.D. draft order.

Id/- P.N.M.
dt/- 19/11/

Remembrancer of Legal Affairs.

U.R. to G.D. No., 8590 , datdd the 19th November 1943.

VVK. 16/7/56/

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